Supreme Court, U.S.
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No. 86-155

# In The

# Supreme Court Of The United States

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OCTOBER TERM, 1986

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**EMMET RIGGS,**
*Petitioner,*

v.

**STATE OF CONNECTICUT,**
*Respondent.*

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## BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT FOR THE STATE OF CONNECTICUT

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## QUESTIONS PRESENTED

I. WHETHER INDICTMENT BY A LEGALLY CONSTITUTED GRAND JURY VIOLATED THE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS.

II. WHETHER THIS COURT SHOULD REVIEW A CLAIM THAT THERE WAS INSUFFICIENT EVIDENCE OF INTENT TO KILL TO SUPPORT SUBMISSION OF A MURDER CHARGE TO THE JURY.

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## CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

**Rule 17.1, Revised Rules of the Supreme Court of the United States**

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so

far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals had decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this court.

**Article 1, § 8 of the Constitution of Connecticut (prior to amendments of 1982)**

Sec. 8. In all criminal prosecutions, the accused shall have a right to be heard by himself and by counsel; to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process to obtain witnesses in his behalf; to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great; and in all prosecutions by indictment or information, to a speedy, public trial by an impartial jury. No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, nor shall

excessive bail be required nor excessive fines imposed. No person shall be held to answer for any crime, punishable by death or life imprisonment, unless on presentment or an indictment of a grand jury, except in the armed forces, or in the militia when in actual service in time of war or public danger.

**Fourteenth Amendment to the United States Constitution**

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property,

without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

**Fifth Amendment to the United States Constitution**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land nor naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any onminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## OPINION BELOW

The opinion of the Connecticut Appellate Court is reported at 7 Conn. App. 180, 508 A.2d 67 (1986), and is found in petitioner's appendix 1A - 8A.

## JURISDICTION

The judgment of the Connecticut Appellate Court was entered on April 22, 1986. The Connecticut Supreme Court, by order dated May 28, 1986, denied a petition for certification to appeal from the Appellate Court decision. The petition for a writ of certiorari was filed on July 28, 1986. The State of Connecticut assumes, contrary to the petitioner's erroneous assertion, that the jurisdiction of this Court is invoked under 28 United States Code § 1257(3).

## STATEMENT

The petitioner was indicted by a grand jury on a charge of murder.[1] He has at no time claimed either that the indictment was in any way facially improper or that the grand jury was biased.

The evidence at trial was that the victim was sitting at the bar in a Hartford, Connecticut, cafe with two friends when the petitioner approached. He became engaged in a heated argument with the victim, who rose from her chair and pointed towards him. The petitioner claimed at trial that the victim confronted him with an object, either a

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[1] At the time of the indictment, the Constitution of Connecticut provided that "[n]o person shall be held to answer for any crime, punishable by death or life imprisonment, unless on a presentment or an indictment of a grand jury." Article I, Sec. 8.

knife or a razor blade. No other eye-witnesses saw such an object nor was one ever discovered. The defendant drew a knife from his jacket and interposed it between himself and the victim. The defendant claimed the victim fell into his knife. The victim's friend, however, saw the defendant's hand move. The knife entered the victim's upper chest in a depth of approximately five inches, penetrating the aorta. The defendant withdrew the knife, placed it in his jacket and left the cafe. (Pet. App. 3A-4A). The jury was charged on the elements of murder, and also on the lesser included offenses of manslaughter in the first degree, manslaughter in the second degree and criminally negligent homicide. The jury found the defendant guilty of manslaughter in the second degree. (Pet. App. 4A).

## ARGUMENT

1. The essence of the petitioner's first question is that this court should grant a writ of certiorari to determine whether a state grand jury indictment is a sufficient finding of probable cause to permit trial on the merits.

Because the federal constitutional requirement of a grand jury indictment is not applicable to the states, Hurtado v. California, 110 U.S. 516 (1884), the issue of the sufficiency of the indictment is largely one of state law, subject only to the general fourteenth amendment guarantees of due process. Peters v. Kiff, 407 U.S. 493, 496 (1972).

This Court has held that an indictment returned by a legally constituted nonbiased grand jury, if

valid on its face, is enough to call for a trial of the charge on the merits and satisfies constitutional requirements. Lawn v. United States, 355 U.S. 349, 339 (1958). In Costello v. United States, 350 U.S. 359 (1956), this Court squarely rejected the contention that grand jury indictments could be challenged on the grounds that they are not supported by adequate evidence:

> It would run counter to the whole history of the grand jury institution in which laymen conduct their inquiries unfettered by technical rules. Neither justice nor the concept of a fair trial requires such a change. In a trial on the merits, defendants are entitled to a strict observance of all the rules designed to bring about a fair verdict. Defendants are not entitled, however, to a rule which would result in interminable delay but add nothing to the assurance of a fair trial. 350 U.S. at 364.

The conclusion of the Connecticut Appellate Court that the existence of a facially valid grand jury indictment was sufficient to support a trial on the merits fully comports with this Court's position on the question, and consideration of the petitioner's claim would involve this Court in a state law issue which would add nothing of precedential value to Fifth and Fourteenth Amendment jurisprudence.

Furthermore, the question presented to this Court was not raised by the petitioner below. As the Appellate Court opinion reflects, the claim presented on appeal was that the prosecuting attorney abused his discretion in seeking an indictment on the murder charge, not that a facially valid grand jury indictment was insufficient to meet

federal due process requirements. (Pet. App. 5A-7A). Thus, this Court also should decline review because the constitutional claim now presented was not "pressed or passed upon below." Illinois v. Gates, 462 U.S. 213 (1983).

2. The remaining questions presented by the petitioner are wholly factual, as he asks this court to consider whether probable cause existed to support a charge of murder, and whether there was sufficient evidence to permit this charge to go to the jury.

This Court has considered the definition of "probable cause" in various contexts, concluding that "probable cause" comprises those facts and circumstances which would lead a person of reasonable caution to believe that a crime is being, or has been,

committed. See Draper v. United States, 358 U.S. 307, 313 (1959); Carroll v. United States, 267 U.S. 132, 162 (1925). It is similarly well-established that probable cause can be established by "a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction." Hoffa v. United States, 385 U.S. 293, 310 (1966).

The factual questions presented by the petitioner are not matters on which various courts have split, or which have not been resolved by existing precedent. Rather, they call for application of well-established standards to the specific circumstances of this matter. This Court's resources ought not to be spent in resolving questions wholly dependent on a unique factual context. See Wolfe v. North Carolina, 364 U.S.

177, 196 (1960); United States v. Johnston, 268 U.S. 220, 227 (1925).

Furthermore, the circumstantial evidence outlined in the Appellate Court opinion and in the Statement portion of the State's brief, supra, amply demonstrates sufficient evidence of intent to kill to permit submission of the murder charge to the jury.

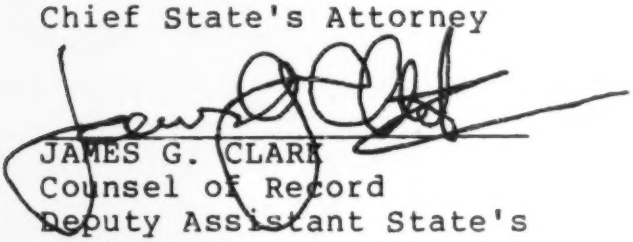
## CONCLUSION

For these reasons, the State of Connecticut urges this Court to deny the petition.

Respectfully submitted.

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